

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.328 of 2015

Arising Out of PS.Case No. -626 Year- 2007 Thana -ARARIA District- ARARIA

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BIREN YADAV @ BIRENDRA YADAV S/O LATE BALDEO YADAV
RESIDENT OF VILLAGE KHARIHIYA BASTI, WARD NO. 10, P.O. + P.S. +
DISTRICT ARARIA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Manoj Kumar, Adv.
For the State : Mr. Z. Hoda, APP
For the informant : Mr. Shiv Shankar Sah, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 07-11-2017

Appellant Biren Yadav @ Birendra Yadav has been found guilty for an offence punishable under Sections 324,307,323,341,504/34 of the IPC, out of which he has been sentenced only for Section 307 of the IPC to undergo R.I. for seven years as well as to pay fine appertaining to rupees seven thousand and in default thereof to undergo imprisonment for six months, additionally, under Section 324 of the IPC sentenced to undergo R.I. for three years, to pay fine appertaining to rupees two thousand and in default thereof, to undergo imprisonment of two months, additionally with a further direction to run the sentences concurrently while co-convict Shanti Devi (Non-appellant) for minor offences and was let off giving benefit under Section 3 of Probation of Offenders Act vide judgment of conviction and sentence dated 27.05.2015 passed by Ad-hoc Addl. Sessions Judge, IVth, Araria in Sessions Trial No.23 of



2010.

2. PW.4, Radha Devi while was admitted at Sadar Hospital, Ara in an injured condition gave her fardbeyan on 01.12.2007 at about 07:00 PM disclosing therein that on the same day at about 08:00 AM her younger son was playing with a ball at her Darwaja and during course thereof, ball had gone to the Aagan of Biren Yadav as a result of which Biren and his wife began to abuse as well as, bent on to assault. Neighbours intervened whereupon, quarrel was pacified. At about 05:00 PM again Biren Yadav and his wife Shanti began to abuse. On her protest, Biren Yadav gave spade blow over her forehead as a result of which, she sustained injury she had further been assaulted by the Shanti Devi with fist and slap. Her husband along with others lifted her to hospital.

3. On the basis of the aforesaid fardbeyan, it is evident that after registration of Araria P.S. Case No.626/2007 investigation was taken up and completing the same charge sheet was submitted facilitating the trial in a manner, the subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that both the parties happen to be own Bhabhi and Debar, have common house but are on strain relationship relating to property belonging to third brother Biren Yadav who is an idiot, unmarried.



Their houses are thatched roof as well as covered by iron sheet. The informant sustained injuries while stumbling against iron sheet and in the background of strained relationship, he has been falsely implicated.

5. In order to substantiate its case prosecution had examined altogether eight PWs who are PW.1 Jai Prakash Yadav, PW.2 Sita Devi, PW.3 Shailendra Yadav, PW.4 Radha Devi, PW.5 Ram Surat Prasad, PW.6 Kantu Paswan, PW.7 Dr. Pradeep Kumar and PW.8 Dr. Captain Sudhir Ranjan. On the other end also exhibited Ext.1-Signature of Sadanand Yadav, husband of informant over fardbeyan, Ext.2-Formal FIR, Ext.3-Injury Report, Ext.4 Series-Prescription of injured Radha Devi dated 04.12.2007 to 31.12.2007 as well as prescription of treatment of injured Radha Devi prescribed by Dr. N.R. Haldar, Silliguri, West Bengal. The defence, as stated above had not produced documentary evidence but had examined one DW.1-Kameshwar Yadav.

6. Learned counsel for the appellant has submitted that learned lower court passed judgment impugned without appreciating the materials coming out from the mouth of the witnesses during course of cross-examination. If, the same would have been properly appreciated then in that circumstance, the finding would not have been recorded. To substantiate the same, it has been submitted that nature of injury, as perceived by the doctor PW.7 did not justify to



have been inflicted by means of spade on account of dimension of the injury which, certainly would not be by a spade. That being so, the suggestion of the defence and admitted by the witnesses including the I.O. PW.6 that the roof of the house happens to be covered with iron sheet, might have sustained injury therefrom which, in the background of strain relationship which the prosecution witnesses also admitted, got a golden opportunity to implicate the appellant hatching false, frivolous story.

7. Furthermore, it has also been submitted that I.O. had not corroborated the assertion of the prosecution with regard to independent identity of both the parties having duly demarcated inside their house rather, his objective finding relating to place of occurrence is that both the parties are residing in the same house, that means to say under joint possession and so, falling a ball inside the Aagan of appellant would not be acceptable and on account thereof, motive fails.

8. Furthermore, it has also been submitted that all the witnesses so examined are chance witnesses and their evidences in the aforesaid background are fit to be rejected. To substantiate the same, it has been submitted that PW.1 is the son-in-law of the informant while PW.3 is the brother of the informant. PW.4 is informant herself and PW.2 Sita Devi though happens to be resident of same village but her appearance at the place of occurrence also



happens to be doubtful. Furthermore, it has also been submitted that even considering the status of PW.4, informant to be an injured witness, even from the facts and circumstances coming out from her evidence did not justify it a case whereunder the finding recorded by the learned lower court would be deemed to be justified. There was quarrel and in course thereof, single blow of spade was given and the dimension of the injury itself suggests activity of the appellant and that being so, application of Section 307 is found not at all attracted. Furthermore, neither 341 nor 504 of the IPC is made out. So far Section 324 is concerned considering the nature of the dispute, inter se relationship, the sentence so inflicted therefore is not at all justifiable.

9. The learned Additional Public Prosecutor assisted by the learned counsel for the informant controverted the submission having made on behalf of appellant and submitted that the finding having been recorded by the learned lower court happens to be just, legal and proper and is fit to be confirmed. In order to justify the finding, it has been submitted that from the evidence of PW.4, it is evident that Bauka, another brother happens to be more than 22 years of age was residing with her and so, any claim having been advanced at the end of appellant relating to his share could not be legally entertainable, as appellant happens to be separate. Moreover, during cross-examination PW.4 had clearly stated that Bauka remains with



her. He is being looked after by her and so, certainly her property is to devolve upon the informant and not upon the appellant. That was the motive wherein the appellant, who happens to be own Debar, pounced upon her and seeing her a lady having absence of her husband gave spade blow causing injury upon her forehead. It has also been submitted that though PW.7 had shown the injury having short dimension but, the wound continued and became dangerous to life whereupon she was treated by the doctor PW.8 as well as at Silliguri, and the relevant prescriptions are an exhibit of the record whereupon, having been conclusively proved at the end of the prosecution that appellant happens to be the sole assailant by means of spade coupled with nature of the injury depicting intention and for that rightly convicted the appellant and sentenced therefor. So submitted that the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed.

10. As per evidence of PW.7, doctor he had examined the victim Radha Devi on 01.12.2007 and found following injuries over her person:

- (i) $\frac{1}{2}$ " x $\frac{1}{4}$ " x skin deep size wound over left side of forehead.
- (ii) Tenderness over chest.
- (iii) Tenderness over back.



Injuries having been committed within six hours. Nature of injuries to be simple. Injury no.1 has been caused by the sharp cutting weapon while injury no.2 and 3 by hard and blunt substance.

During cross-examination he had admitted that this kind of injury could be caused if being sustaining of stroke by means of any kind of sharp cutting weapon.

11. PW.8 is another doctor who had examined the victim on 04.12.2007 as well as on 10.12.2007, 13.12.2007, 20.12.2007, 31.12.2007 and had referred her to Silliguri for treatment and then had exhibited the prescription of Dr. N.R. Haldar of Silliguri. Neither he had given any opinion relating to injuries nor his evidence happens to be in accordance with law, though exhibited prescription prescribed by Dr. Haldar. That being so, the finding recorded by the PW.7 with regard to nature of the injuries remained intact.

12. So far applicability of Section 307 IPC is concerned, there should be an action at the end of the accused with an intention to commit murder or knowing full well since before that his action if allowed to fructify will ultimately lead to death of the victim. Unless and until, aforesaid eventuality is found properly placed at the end of the prosecution no offence under Section 307 of the IPC would mature. On the other hand the finding could be inconsonance with the



nature of the injury sustained by the injured.

13. In order to search out whether materials having on the record justify the finding recorded by the learned lower court relating to Section 307 of the IPC, the evidence of the informant/victim Radha Devi has been gone through. In the background of the fact that in fardbeyan, though not necessary, she had not named any person as a witness which has got relevancy in the background of status of the witnesses, PW.1 being son-in-law and PW.3 being brother apart from, Sita Devi the person of her camp. The occurrence is of dated 01-12-2007 at about 05:00 AM. On that day, about 08:00 AM while her son was playing with a ball, that had gone in the courtyard of appellant whereupon appellant along with his wife Shanti Devi abused. They also became hasty to assault but, on account of intervention of persons, matter was pacified. In the evening hour, they again began to abuse which was protested by her as a result of which, appellant Biren brought spade from his house and gave a blow over her forehead causing injury thereupon. Blood had oozed out. She fell down and thereafter, Shanti Devi assaulted her with fist and slap. Biren was to repeat blow, but was apprehended. Thereafter, she became unconscious. She regained sense at the hospital. Her statement was recorded by the police at the hospital. As, her injury was not cured therefore, she got it privately examined up to Silliguri. During cross-examination at para-2 there happens to be description



with regard to status of the family. In para-3 she had stated that on the alleged date of occurrence quarrel took place twice. During first incidence Jai Prakash Yadav, Satendra, Mahendra, Putul, Ranjan Devi, Sita Devi were present. The second incident took place after twelve hours. All the witnesses had assembled half an hour before second occurrence. Sita, Jai Prakash, Satendra, Putul, Mahendra, Ranjan Devi they all were present. Even more persons were present. Then had disclosed inter se relationship. At para-4 she had stated that boundary of the P.O. happens to be North-Sita Devi, South-Biren, East-Road, West-Barren land. Occurrence took place at the darwaja. Biren was present there. He was empty hand. He had abused. She sustained injuries over her forehead. Accused had assaulted with spade from front side. Then there happens to be contradiction with regard to her further statement. She had further stated that they have got thatched house.

14. PW.6 is the Investigating Officer who had stated that on 01.12.2007 he had received OD slip from the Sadar Hospital, Araria whereupon he had gone there and recorded fardbeyan of injured Radha Devi. (Exhibited). Then thereafter, on being entrusted with the investigation he had gone to place of occurrence and inspected the same. The house happens to be in jointness of informant as well as accused. He had shown the boundary of the place of occurrence. East-Road and house of Parmanand, West-



Barren land of Dashrath Yadav, North-House of Bimal Yadav, South-House of Biren Yadav. He had recorded statement of Sita Devi, Jai Prakash Yadav, Surendra. He came back and then recorded further statement of the informant. Then thereafter, after completing investigation submitted charge sheet. During cross-examination apart from contradiction of relevant witnesses, cross-examination relating to place of occurrence had also occurred and during course thereof, he had stated that both the parties are full brothers having common house, Sahan. The house happens to be thatched roof while Darwaja happens to be iron sheet. He had further stated that he had not examined the person of the boundary. He had also admitted that an earlier occasion both the parties fought a proceeding under Section 107 of the Cr.P.C. on account of dispute relating to properties. PW.6 is the formal witness.

15. Now coming to evidence of remaining witnesses, PW.1 happens to be son-in-law of informant who during course of examination-in-chief itself had deposed that on the alleged date and time of occurrence Shanti Devi and Radha Devi were quarreling over coming of ball inside the court yard and then, both the parties indulged in marpit and during course thereof, appellant Biren brought spade and gave a blow over forehead of Radha Devi. Shanti Devi assaulted with fist and slap. During cross-examination he had admitted inter se relationship, common house occupied by both the



parties. In para-3, he had stated that Biren was standing over Darwaja empty hand. He is unable to say who had provided spade. He was standing 10-15 hands away from the place of occurrence. They have not tried to intervene into the matter while both the parties were grappling. He had shown the boundary of the P.O. North-Mithu Yadav, South-House of Biren Yadav, East-House of Pramanand Yadav, Prithvi Yadav, West-Barren land. He had further stated that their house happens to be thatched roof while Sahan has got iron sheet roof.

16. PW.2 is the Sita Devi. She had stated that when she came at the place of occurrence, at that very time Shanti Devi assaulted Radha Devi with fist and slap. Biren brought spade from his house and gave a blow over her forehead causing injury therefrom. Radha Devi became unconscious. During cross-examination at para-2 she had stated that when she reached at the place of occurrence she found 25-30 persons around Radha Devi who was in pull of blood. They took away Radha Devi to hospital. There was only one injury over her forehead. In para-4, she had further stated that there was injury over her head of dimension 4” long. Apart from this, another injury was also over her forehead having 2” length.

17. PW.3 had deposed that on the alleged date and time of occurrence Birendra had given a spade blow over forehead of Radha Devi as a result of which, she sustained injury. She became



unconscious. Wife of Biren had assaulted with fist and slap. People assembled and then took her away to hospital. He had not gone to hospital. During cross-examination at para-2 he had stated that Radha Devi who is present outside the court room has brought him to depose. He had further admitted that he happens to be full brother of Radha Devi. He had further stated that when he reached at the place of occurrence, 7-8 persons were present since before. Radha Devi was unconscious. People were spraying water over her face. He had further admitted inter-se relationship. In para-3, he had stated that he is not remembering names of those persons who were standing since before. On the following morning, he had gone to hospital and met with Radha Devi and had seen the injury.

18. Taking into account the totality of the event, it is apparent that so far status of the witnesses are concerned, PW.1, PW.2, PW.3 have not stood the test. PW.4, informant, injured had properly faced the cross-examination and that being so, assault having at the end of appellant Biren Yadav is found duly substantiated, corroborated by the evidence of doctor PW.7. Section 134 of the Evidence Act speaks about quality of the evidence and not the quantity that being so, the evidence of single PW that too when the witness happens to be an injured one and having priority on that very score is to be accepted unless and until there happens to be inherent infirmity persisting in the evidence. From the evidence of, as



discussed hereinabove, PW.4, injured stood the test whereupon, the learned lower court had rightly found appellant Biren Yadav to be the author of the injury. However, from the facts as enumerated above neither intention nor knowledge while striking the blow over PW.4 by the appellant with an intention to commit murder or giving the blow with the knowledge that the injury was to ultimately lead with death of the deceased, is found duly exposed. That being so, the conviction and sentence recorded by the learned lower court with regard to Section 307 of the IPC did not find favour and is accordingly set aside. With regard to other sections, so far 341 and 504/34 of the IPC are concerned, there happens to be no evidence with regard to wrongful resbaint as well as the activity leading to apprehension of breach of peace or provoking breach of peace. That being so, section 341,504 of the IPC is not applicable. So far 323 is concerned, there happens to be no allegation that appellant had caused simple hurt so Section 323 IPC is also not, made out. That being so, the finding recorded by the learned lower court to that extent is also being erased.

19. Now coming to the remaining section 324 of the IPC, it is evident that the finding of the learned lower court happens to be based upon material available on the record and on that very score is affirmed. So far sentence is concerned, considering the nature of the dispute amongst the parties, as well as considering continuation of



this proceedings since 2007, the sentence inflicted by the learned lower court R.I. for three years is reduced to R.I. for six months enhancing the quantum of fine from 2000 to 5000 and in default thereof, to undergo S.I. for three months. Appellant is on bail hence his bail bond is cancelled, directing him to surrender before the learned lower court within four weeks to serve out the remaining part of sentence failing which, the learned lower court will be at liberty to proceed against the appellant in accordance with law.

20. With the aforesaid modification, instant appeal is dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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